IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Naoyuki MOCHIDA	Group Art Unit : 3626
Appl. No.	: 10/535,408 (U.S. National Stage of JP 2004/011302)	Examiner : T. N. NGUYEN
I.A. Filed	: July 30, 2004	Confirmation No. : 6002
For	: RELAY SERVER, RELAY SERVER SERVICE MANAGEMENT METHOD, SERVICE PROVIDING SYSTEM AND PROGRAM	

RESPONSE TO RESTRICTION REQUIREMENT, WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

ELECTION

In response to the Examiner's restriction requirement dated November 16, 2009, in which the one month period for responding thereto runs to December 16, 2009, Applicant elects, with traverse, the invention identified by the Examiner as Invention I, drawn to a relay server that is classified in class 709, subclass 230, and which includes claims 11-19 and 21-25.

TRAVERSE

Applicant respectfully traverses the Examiner's restriction requirement. In this regard, in addition to the arguments presented below as to why the restriction requirement is inappropriate and should be withdrawn, Applicant submits that the present application is a national stage application filed under 35 U.S.C. ¤371, and thus, unity of invention practice, and not restriction practice, governs in this application.

Although the Examiner's Office action identifies two independent and distinct inventions, Applicant respectfully requests that each of the two inventions, nevertheless, be examined in the instant application, pursuant to the guidelines set forth in M.P.E.P. §803. That is, the Examiner is respectfully requested to reconsider his requirement and find that there would not appear to be a "serious burden" on the Office in examining claims directed to the non-elected Invention II (e.g., claim 20), which would remain withdrawn from consideration if the restriction requirement is maintained.

M.P.E.P. Chapter 800 sets forth its policy by which Examiners are guided in requiring restriction under 35 U.S.C. §121. Section 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicant respectfully submits that, in spite of the accuracy of the Examiner's restriction analysis, there are at least two factors, based upon which Applicant requests that the non-elected claims be examined in the instant application.

Firstly, Applicant submits that claim 20 (e.g., non-elected Invention II) corresponds to prior claim 10, the claim differing in that claim 20 was revised to be placed in better U.S. form. The elements of prior examined claim 10 are found in non-elected claim 20. The Examiner has previously performed a search and examined claim 10 (see Office Action mailed on April 3, 2009). Since the Examiner previously concluded there would be no hardship in examining the subject matter of prior claim 10, and actually performed a search with respect to prior claim 10 (as claim 10 was subjected to a prior art rejection in the aforementioned Office Action), Applicant submits that presently pending claim 20 (e.g., non-elected Invention II), which corresponds to prior examined claim 10, should also be examined.

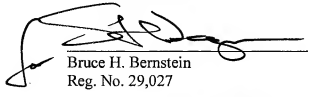
Secondly, it would appear that the search for the inventions identified by the Examiner would be coextensive or at least significantly overlap. That is, if the Examiner were to perform a search for Invention I (e.g., claims 11-19 and 21-25), i.e., the relay server, there would not appear to be a serious burden in continuing the examination (which Applicant submits has already been done with respect to prior claim 10) for Invention II (e.g., claim 20), i.e., a service delivery system for the relay server.

Further, Applicant submits that the present application is a National Stage Application submitted under 35 U.S.C. §371. Applicant submits that unity of invention practice, and not the currently applied restriction practice, is applicable in the present application (see, for example, M.P.E.P. §1893.03(d)). Thus, Applicant submits that it is erroneous of the Examiner to apply U.S. restriction practice to a 371 National Stage Application, and respectfully requests that the restriction requirement be withdrawn.

For all of the foregoing reasons, Applicant respectfully requests the restriction requirement be reconsidered and withdrawn. Any comments or questions concerning this application can be directed to the undersigned at the telephone number given below.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
Naoyuki MOCHIDA



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